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File No. O. Court-Fees/41

Legal DEPARTMENT

A. BRANCH

Subject:— opinions under the Court Fees Act 1870

(VII of 1870)

P 16 E

File No. O Court- Fees |

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C O N T E N T S

Legal Department File No. O.C ourt fees/41.

Sr. No.	R.I.No./O.No.	Subject	Pages.
		Opinions under the Court Fees Act, 1870.	
1)	O.No.1722/28-2-41.	Whether an application made by a person claiming to have his name entered in the Electoral Roll. The B.L. assembly or to have the the name of a other struck off therefrom would be chargeable to Court fee under the Second Para in article 1(b) in the Second Sec. to the Act.	1 - 2.
2).	R.I.No.3997/2-5-41.	G.R., R.D.No.5031/39 dt.4-4-41. Re: Court fee. Question regarding levy of an applications made by persons claiming to have their names entered or struck off from Electorol Roll of the B.L.A.	3 - 4.
3)	O.No.1864/3-3-41.	Question regarding levy of Court fee an application sent by Home.General Secretary of the Bombay Provl. Peasants union to the collector in respect of the order powered by him to sell by public action the low land belonging to certain pensants in satisfaction of their debts.	penal 5 -6.
4)	O.No. 2682/25-3-41.	Whether in respect of complaints filed under SS 21 and 22 of the Bombay Primary Education Act, 1923, Court fee is required to be paid.	7 -10.
5)	O.No.3986/3-5-41.	Question regarding stamping with Court fee of a succession Certificate granted under Sec. 382 of the Indian Succession Act, 1925.	11 - 12.
6)	O.No.5476/19-6-41.	Question whether an application to a Chief Officer of a municipality for temporary occupation of municipal lands for holding dinners or for any other purpose except for keeping building materials is exempt from stamp duty under the Act.	13- 14
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10)	O.No.6020/11-7-41.	Question regarding levy of Court fee in respect of succession certificate granted by a British representative in a foreign State.	59- 60.
11)	O.No.6825/4-8-41.	Question 1) whether ~~an~~ applications filed by Railwey compaies under sec. 113(4) of the Indian Railway Act, 1890 are liable to pay Court fees; 2) Whether the said Companies are liable to pay Court fees upon Mukhtarnamas and aklatnamas, and (3) Whether Companies are liable to pay process fees in non-conjiable cases instituted by them.	61- 66.
12.)	R.I.No.8680/12-9-41.	G.C.H.D.No.5084/L.Dt.6-9-41. Re: Court fees. Realisation of and process fees from Railway Companies.	67 -68.

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The question for the consideration of the Remembrancer of Legal Affairs is whether an application made by a person claiming to have his x name entered in the Electoral Roll of the Bombay Legislative Assembly or to have the name of another struck off therefrom would be chargeable to Court fee under the second paragraph in article 1(b) in the Second Schedule to the Court-fees Act, 1870 (VII of 1870).

2. Under rule 19 of the Bombay Legislative Assembly Electoral (Preparation, Revision and publication of Electoral Rolls) Rules, 1936, a claim or objection can be lodged in respect of an omission or an entry in the electoral roll. Under ~~xhxx~~ rule 20 such claim or objection shall be received by the Revising Authorities who are the various judges specified in that rule. Similarly under rule 21 an application can be made to the Revising Authority for the entry of his name in the Electoral Roll by a person duly qualified but who has failed to make an application to the Registering Authority in the manner prescribed in rule 12. The second paragraph in article 1(b) in Schedule II to the Court-fees Act, 1870, prescribes the Court fee payable in respect of applications or petitions presented to a Civil, Criminal or Revenue Court, not otherwise provided for by that Act. It does not however appear that the Revising Authority under the Bombay Legislative Assembly Electoral Rules, 1936, is a Court within the meaning of the above article. In Jagmohan vs.Venkatesh (35 Bom. L.R. 89) a judge acting under section 15 of the Bombay Municipal Boroughs Act, 1925, has been held to be a persona designata and not a Court. (Vide also Nawalkar vs. Sarojini Naidu 25 Bom. L.R. 463; Gangadhar vs. Hubli Municipality, 28 B.L.R. 519). The Revising Authority under the rules appears similarly to be a persona designata and not a Court. This view is also supported by rule 20(8) which in certain contingencies permits the appointment of practising advocates, Vakils or pleaders for disposing of the claims and objections. Article 1(b) in Schedule II to the Court-fees Act is not therefore applicable in such cases. The view expressed by the District Judge, Ratnagiri,

a t page 11 ante. in this respect is correct.

84/.....21/2.

Remembrancer of Legal Affairs.

U R. to R.D. No. 1722, dated the 25th February 1941.

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d, after issue with an
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File in O. /4.

DY

2/3.
Sc.

Submitted.

Mr. S.H.Jhabvala, M.L.A., Hon . Gen. Secy. of the Bombay Provincial Peasants' Union had sent the application at p.3 ante to the Collr.of Thana in respect of the order passed by him in Divani Claim No. 104 to sell by public auction the land belonging to certain peasants in satisfaction of their debts of two savakars, requesting that instead of the sale of the land he may accept instalments in satisfaction of the debts due from them. The

p.4ante p.1ante Collr returned this application for want of Court-fee stamps of annas eight. Mr. Jhabvala has now approached Govt stating that in the past the representations of the Union have been entertained and remedies granted without any Court fee stamp and requesting Govt to redress his grievance by asking the Collr of Thana not to charge Court fee stamp in this case as it does not fall under the provisions of the Court Fees Act, 1870. The R.D. holds that the application at p.3 ante would require a Court fee stamp of annas eight as held by the Collector of Thana. The R.L.A. is requested to confirm this view.

Sd/.....

U.R. to R.D. No. 1864 dated 3-3-41.

DYR.

21/ 5.

Se.

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7.

R.I.No.765
22-1-41.

Submitted.

The question for the consideration of the R.L.A. is whether in respect of complaints filed under secs.21 and 22 of the Bombay Primary Education Act, 1923, (Bom.IV of 1923) court-fee is required to be paid under the provisions of the Court-fees Act, 1870(VII of 1870).

Sd/.....
P.m.m.19/3.

DMR.
23/5.
5c.

10 Office of the R.I.A.

The view expressed in paragraphs 3 to 5 of O.D. office note is legally correct.

Sd/.....25/3.

Remembrancer of Legal Affairs.

U.R. to O.D. No. 2682 dated the 25th March 1941.

DIB

21/3.

Se.

Submitted after issue with an index card file in O. O fcas/41.

Please see also R.L.A.'s O.No.6020 dt.11.7.1941.

11. Office of the R.L.A.

Section 382 of the Indian Succession Act, 1925 inter alia provides that a succession certificate granted by a British representative in a foreign State shall, when stamped in accordance with the provisions of the Court-fees Act, 1870, with respect to certificates under this Part, have the same effect in British India as a certificate granted or extended under this Part. Section 28 of the Court-fees Act, 1870 inter alia provides that no document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped. There is no provision in the Court-fees Act as to when or by whom a document required to be stamped, should be stamped. Apparently it will be for the party relying upon the document to pay the necessary court fee stamp before using the document as a legally valid one. The question of cancelling court fee stamp under section 30 will arise only when the document is filed or acted upon in any proceeding in any court or office. In the present case the succession certificate has been issued by the Resident for Madras States, Trivandrum and it will not be valid in Bombay unless and until it is properly stamped under the Court-fees Act. It appears from the letter of the Oriental Government Security Life Insurance Co. Ltd. at p.1 ante that the claimant in whose favour the Succession certificate has been issued has already remitted to that company the necessary stamp fees. It would therefore be open to the company to purchase the necessary court-fee stamp and affix it to the Succession certificate so that it may be able to treat the certificate as valid and act upon it.

Sd/.....2/5.

Remembrancer of Legal Affairs

U.R. to H.D. ; No.3986 dated the 3rd March 1941.

DTR.

21/5.

5e.

19 Office of the R.L.A.

The question for consideration of the R.L.A. is whether an application to a Chief Officer for temporary occupation of municipal lands for holding dinners or for any other purpose except for keeping building materials is exempt from duty stamp under the Indian Court Fees Act, 1870.

2. In his opinion No. B-3042, dated the 11th November 1905, a former R.L.A. held that an application to a Municipality for permission to erect temporary booths would require to be stamped with a one-anna court fee stamp under the provisions of section 6 and paragraph 3 of Article 1(a) of Schedule II of the Court Fees Act.

3. Section 6 provides inter alia that no document of any of the kinds specified as chargeable in Schedule I or II to the Act shall be received or furnished by any public officer unless a fee indicated in either of the Schedules as the proper fee for such document is paid. Paragraph 3 of Article 1(a) relates to applications presented to a Municipal Commissioner for the conservancy or improvement of any place.

4. On 12th November 1938, the R.L.A.(Mr. Bannerman) expressed the opinion that it would be difficult to hold that a Chief Officer of a Municipality is a Municipal Commissioner within the meaning of the Indian Court Fees Act, and therefore applications to the Chief Officer would be outside the scope of paragraph 3 of the Article 1(a) of Schedule II. It is true that the previous opinion of 1905 was not taken into consideration when Mr. Bannerman gave his opinion in 1938. It is also true that there is an apparent conflict between the two opinions. Personally, I am inclined to agree with the view expressed by Mr. Bannerman. The term " Public Officer" as used in section 6 has not been defined in the Court Fees Act and it does not appear that the Chief Officer would come within its meaning Assuming that the Chief Officer is a public Officer for the purposes of section 6, the further question arises whether he can be deemed to be a Municipal Commissioner within the meaning of paragraph 3 of Article 1(a) of Schedule II. It seems to me, for reasons stated in the opinion of 1938, that the Chief Officer cannot be deemed to be a Municipal Commissioner. In my opinion, therefore , applications made

to a Chief Officer for temporary occupation of municipal lands for purposes of dinner ect. would be exempt from court fees.

34/..... 18/4.

Remembrancer of Legal Affairs,

U.R. to R.D. , No. 1476, dated the 19th June 1942.

D.S. (Before Issue)
A.L.S. (" ")
S.A. S (after R)
A. S (Before ")

Submitted after issue with an Index Card file in O. Court fees/41.

34/.....20/6.

DYR/
21/ 5.
24.

Under section 19 D of the Court- Fees Act,1870, the letters of administration of the effects of any person deceased shall be deemed valid and available by his administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court fee was paid on such letters of administration. In other words, it is not necessary to pay court fee if it is sought to recover property held either partially or wholly on trust. The question whether an application by a Hindu widow for letters of administration in respect of a joint family property held by her deceased husband is exempt from the payment of court fees has been raised in view of the provisions of the Hindu Womens Rights to property Act, 1937 (Act XVIII of 1937). Sub- section (2) of section 3 of that Act provides that when a Hindu governed by any school of Hindu Law other than the Dayabhag School or by customary law dies leaving at the time of his death an interest in a Hindu joint family property his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had. Under sub-section (3) of section 3 any interest devolving on a Hindu widow under the provisions of that section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner. Clearly the widow's interest comes into being only on the death of her husband as the opening words of sub-section (2) of section 3 show. When the husband is alive, she has no right or interest in the property under the Act. There is nothing in the Act to suggest that the husband during

his lifetime holds the property, in part or wholly, on trust for his wife.

2. It appears from the phrase underlined in para.1 above that the husband has, in certain parts of India (e.g.Bombay), complete rights of disposal for value of his interest in his own lifetime, which would be inconsistent with his position as trustee for his wife in respect of the said interest. ~~X~~ The right of a creditor to proceed against the husband's interest even on his death ~~X~~ after having attached it in his lifetime also militates against the theory of the interest being held in trust.

3. The application in question does not ~~xx~~ therefore appear exempt from payment of the Court-fees under the Court-fees Act, 1870.

Sd/.....10/6.
Remembrancer of Legal Affairs.

U.R. to R.D. No. 5294, dated the 13th June 1941.

D.S. (Before Issue)
A.L.R. (" ")
S.A.S. (" ")
A.S. (" ").

DIR.
21/5.
Se.

57 Office of the R.L.A.

As stated by the R.L.A. in his last opinion No. 3986, dated the 3rd May 1941, it will be for the party relying upon the document to pay the necessary Court fee before using as legally valid the succession certificate granted by a British representative in a foreign State and the question of cancelling Court fee stamp under section 30 of the Court Fees Act, 1870, will arise only when the document is filed or acted upon in any proceeding in any Court or office. When such certificate is tendered with the necessary Court fee in any proceeding in Court, the Court is bound to accept such certificate as valid under section 26. The stamps used to denote such fee chargeable under the Court Fees Act may be impressed or adhesive or partly impressed or partly adhesive as Government may by notification in the Official Gazettee from time to time direct (see section 26). Section 30 provides for cancellation of stamp. It does not therefore seem necessary to move the High Court on this point.

Sd/.....7/7.

Remembrancer of Legal Affairs.

W.R. to H.D. No. 6020 dt/ 11-6-41

D.S. (Before Issue) Sd/....8/7

A.L.R. (" ") Sd/....11/7

S.A.S. (" ") Sd/....8/7.

A.S. (" "). Sd/...11/7.

DNR.

21/5.

Sc.

61. Office of the R.L.A.

The question for consideration of the R.L.A. are:-

(1) Whether applications filed by Railway Companies under section 113(4) of the Indian Railways Act, 1890, are liable to pay court- fees;

(2) Whether Railway Companies are liable to pay court-fee upon Vakkatnamas and Vakalatnamas; and

(3) Whether Railway Companies are liable to pay process fees in non-cognizable cases instituted by them.

It is presumed that these questions relate only to Railway Companies and not to State Owned Railway Administrations.

2. Question No. (1). - Section 19(xvii) of the Court Fees Act, 1870, which provides that a complaint of an officer or servant of a Railway Company is not chargeable with any court fee, is an exemption provision. Article 1(b) in Schedule II to the Act provides for the levy of Court fees on complaints. Section 19(xvii) is an exception to that rule. Section 19(xvii) has to be read along with Article 1(b) in the Second Schedule. The word " complaint" as used in Article 1(b) has been used in a technical sense, i.e. it has the meaning assigned to it in the Criminal Procedure Code. The word has the same meaning in the exemption provision. This inference is supported by the fact that clause (xvii) in section 19 does not state to whom the complaint is to be made. It is therefore clear that it is used in the same technical sense in which it is used in Article 1(b) (see R.L.A.'s opinion No. 1706, dated 13th February 1939). "Complaint" as defined in section 4(1)(h), Criminal Procedure Code, means the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code that some person whether known or unknown has committed an offence, but does not include the report of a Police Officer. " Offence" as defined in section 4(1)(o) means any act or omission made punishable by any law for the time being in force and it also includes any act in the respect of which a complaint may be made under section 20 of the Cattle-Trespass Act. Section 113(4) of the Indian Railways Act, 1890,

as amended by Act VI of 1941 provides firstly for an application by a Railway servant to any Magistrate of the first or second class for the recovery of the sum payable by the passenger as if it were a fine, secondly for the power of such Magistrate if satisfied that the the sum is payable to order it to be recovered and thirdly for the power of such Magistrate to order that the person liable for payment shall in default of payment suffer in prisonment of either description which may extend to one month. It is clear from this provision that mere failure of a passenger to pay the necessary fare would not be an offence, and it becomes an offence only when he fails to pay though ordered by the Magistrate (cf. Dhoulu 33 Bom.22 at page 24; Emp. vs. Devappa 43 Bom. 6-7). The application of a Railway Company's servant to a Magistrate for recovery of fare from a passenger under section 113(4) of the Indian Railways Act would not therefore be a complaint within the meaning of section 4(1)(h), Criminal Procedure Code and it would not fall under section 19(xvii) of the Court Fees Act. Consequently it would be liable to a court fees under Article 1(b) (part second) of Schedule II of the Court Fees Act.

3. Question No. (2) :- Mukhtarnamas and Vakalatnamas that filed on behalf of railway companies are not exempt from the payment of Court-fee. They fall under entry 10 in Schedule II to the Court Fees Act.

4. Question No. (3):- Rule 16 of the High Court Criminal Circular issued under section 20 of the Court Fees Act directs that fees are chargeable for serving and executing processes issued by the Court of any Magistrate in the case of non-cognizable offences, but that no fee is to be levied on any process issued upon the complaint of any public officer acting as such public offic

The expression "public officer" has been defined in the Code of Civil Procedure, 1908, section 2(17): and it has been held in R.L.A's opinion No. 960, dated 5th June 1891, that an officer or servant of a Railway Company is not a public Officer. Process

issued the complain of such an officer is therefore not entitled to exemption from process fee.

5. The views expressed by the Sikkim Government on all the three questions appear to be correct.

Sd...../ 31/7.

Secretary to Legal Affairs.

U.O. No. 6625, dated the 4th August 1961.

D.J.	(Before Leave)	Sd.../ 31/7.
A.L.R.	(" ")	Sd.../2/8.
S.A.J.	(" ")	Sd...31/7.
A.D.	(" ").	Sd...2/8....

DM.
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Sa.

28/7

SVM 28/7